.UP 10 2; Draft, uniplex; -n -PA4 -y -dFX-NORMAL -Fx -e; dumbp
L.......T.......T.......T.......T.......T.......T.......T.......T....R
.UP 10 2; Draft, uniplex; -n -PA4 -y -dFX-NORMAL -Fx -e; dumbp
L.......T.......T.......T.......T.......T.......T.......T.......T....R
..............L.......T.......T.......T.......T.......T........T.J
.PL60
.HM5
.FM1
.SP1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA
CIVIL APPELLATE JURISDICTION @@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

SECOND APPEAL NO.429 OF 2005 @@
AAAAAAAAAAAAAAAAAA AAAAAAAAAAAAAA
with
CIVIL APPLICATION NO.1736 OF 2006

Yusuf Ibrahim Pathan
& Others ..Applicants

versus

Maruti Bhau Kajarkar & Others ..Respondents

Mr.Sarang Aradhye i/b/ R.V.Govilkar for the Applicant

Mr.N.V.Bandiwadekar for the Respondents

Coram : S.R.Sathe, J.@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA
Dated : 3rd Mar, 2006@@
AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

P.C.
.SP2

1. Heard learned Advocate for appellant at length.

2. The suit simplicitor for permanent injunction has been dismissed on merits by the trial Court holding that the Plaintiff failed to prove his lawful possession of the suit land on the date of the suit. The said finding is also confirmed by the First Appellate Court.

3. Both the courts below have held that though the Agreement to Sale was executed in favour of

plaintiff wherein it was shown that plaintiff is put in possession of the land in the year 1977, in fact it appears that the entire land is in possession of the defendant since the year 1948 or thereabout. There is nothing on record to show that the said possession was taken away from the defendant and handed over to plaintiff. Even when the matter with regard to entries in the 7X12 extract was taken up before the Revenue Authorities the SDO has held that the entries in favour of the plaintiff are wrong and defendant was in fact in possession of the said land. When such is the position, it is very cler that no substantial question of law in invovled in this matter.

4. The learned Advocate for the Appellant/ Original Plaintiff tried to argue before me that the finding of the courts below that plaintiff has failed to prove his lawful title to the suit land is not correct. According to him from the decision given in Special Civil Application No.1258 of 1977 on 10/11 December, 1980, it can be seen that the plaintiff has lawful title to the suit land. However, admittedly the judgment in the above mentioned Civil Application was not produced before the courts below. It is for the first time the plaintiff is trying to place on record by seeking permission to adduce additional evidence. However, even bare reading of the application indicates that the Appellant/Plaintiff has not given any reasons as to why he could not produce the said judgment in the Courts below and what sort of efforts were made by him for producing the said judgment. He has utterly failed to make out a case under Order XXXXI Rule 27 of CPC. So, the application for adducing additional evidence has to be rejected. Assuming for the sake of argument that the said document is allowed to be taken on record and is read in evidence, still it would not change the fate of this appeal as both the courts below have recorded the concurrent finding of fact that on the date of the suit plaintiff was not in actual possession of the suit land. Naturally, he can't claim permanent injunction as prayed. Thus, there is no substantial question of law involved in the appeal. Hence, Appeal is dismissed in limine.

. So also the Civil Application No.1736 of 2006 is dismissed, in view of the above order.

(S.R.Sathe, J.)